

Application No.: 10/564101

Case No.: 58745US004

**REMARKS**

Claims 1-14 and 17 were pending, but are now cancelled and replaced by claims 18-32. Reconsideration of the application is requested.

**Claim Amendments**

The prior claims were cancelled and replaced by a new set of claims in order to fix a numbering error identified by the Examiner. In addition, prior claim 1, which is now claim 18, was modified to recite an additional component taken from prior claim 2 (now claim 19), and to clarify that the substituent in component (a) contains "one" ethylenically unsaturated group. Other changes were made to address the § 112 rejections and are discussed below. No new matter has been added by these changes.

**§ 112 Rejections**

Claims 3, 10, 14 and 17 were rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Prior claim 3, which corresponds to new claim 20, was asserted by the Examiner to be indefinite because it is unclear how at least two groups according to formula III can be bonded to the carbon atom in formula II. Applicants disagree. The carbon atom in formula II has three substituents, namely R<sub>3</sub>, R<sub>4</sub> and R<sub>5</sub>, that are bonded to it. If two of these substituents have the structure of formula II, they could both be bonded to the carbon atom in formula II and still have room for one more substituent if they are each bonded by a single bond to the carbon atom in formula II. Since the structure of formula III could be arranged so that it is bonded to the carbon atom in formula II via a single bond, it is possible for multiple such moieties to be attached to the carbon atom in formula II. In the case where a single substituent, such as R<sub>3</sub>, comprises multiple groups according in formula III, it is still possible for the substituent R<sub>3</sub> to be bonded to the carbon atom of formula II via a single bond even though it contains multiple groups of formula III. Consequently, Applicants believe the claim is clear in its present form and satisfies the requirements of 35 USC § 112.

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Prior claim 10, which corresponds to new claim 27, is asserted by the Examiner to be unclear because it contains the phrase "at least about." Although Applicants could not find this phrase in prior claim 10 (now claim 27), Applicants did see this phrase and the similar phrases "less than about" and "more than about" in other claims. In the new version of the claims, the word "about" has been removed whenever it was used in conjunction with the phrases "at least," "more than" and "less than." Accordingly, Applicants submit that this rejection may now be withdrawn.

Prior claim 14, which corresponds to new claim 31, was asserted to be indefinite by the Examiner because it was missing a comma. The comma has now been added to the claim and this rejection under § 112 may be withdrawn.

Prior claim 17, which corresponds to new claim 32, was asserted to be indefinite by the Examiner because the phrase "substituent is, and" is incomplete. In the new version of the claim, the missing element is provided. Support for this change is found, for example, in original claim 1. No new matter was added to the application. In view of this change, Applicants submit that the § 112 rejection of this claim may be withdrawn.

#### **§ 102 and § 103 Rejections**

The prior pending claims were rejected under 35 USC § 102(b) and/or § 103(a) as being unpatentable over Frey et al (U.S. 6,245,872), alone or in combination with Fuchigami (U.S. 5,925,690). The claims were also rejected under § 102(b) and/or § 103(a) as being unpatentable over Steckler (U.S. 3,855,364). Applicants respectfully traverse this rejection.

The Office Action asserts that Frey teaches a mixture of a monoester and diester of a phosphate and thus anticipates or renders obvious the claimed invention. The Office Action also cites to Steckler apparently because it teaches a similar combination. However, this reasoning does not accurately characterize the scope of independent claim 18. This claim does not recite simply a mixture of a monoester and diester of a phosphate. Rather the claim recites a mixture that includes as one component (a) a phosphoric acid that has a substituent with one unsaturated moiety, and as a second component (b) a phosphoric acid that has a substituent with two or more unsaturated moieties. By observing that references such as Frey and Steckler describe the combination of a monoester and diester of a phosphate, the Office Action seems to be focusing

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on the number of substituents bonded to the phosphate atom rather than on the number of unsaturated moieties contained within the substituents. The Office Action is apparently equating component (b) in claim 18 with a diester of a phosphate. However, just because a phosphoric acid has several substituents bonded to the phosphorous atom would not be sufficient to meet the requirements of component (b) if, for example, each of the substituents has only one ethylenically unsaturated moiety. Conversely, it is not necessary (although permissible) for component (b) to have more than one substituent bonded to the phosphorous atom, provided that there is at least one substituent that contains two or more ethylenically unsaturated moieties.

Neither Frey nor Steckler describe mixing a phosphoric acid that has a substituent containing one ethylenically unsaturated moiety with a second phosphoric acid that has a substituent containing two or more ethylenically unsaturated moieties. Thus, these references fail to anticipate the present claims.

Fuchigami does not compensate for the deficiencies of Frey and Steckler as it is cited by the Examiner merely to provide the additional limitation recited in prior claim 14 (now claim 31). Thus, even in combination, the cited references fail to teach or suggest all the elements of independent claim 18. This claim, and all the claims that directly or indirectly depend from it, are, therefore, patentable over these references.

#### CONCLUSION

In view of the above, it is submitted that the application is in condition for allowance. Reconsideration of the application as amended is hereby requested.

Respectfully submitted,

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Date

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